METLAKATLA INDIAN COMMUNITY OF THE ANNETTE ISLANDS RESERVE, Appellant	:	Order Affirming Decision
v.	:	Docket No. IBIA 92-7-A
DEPUTY COMMISSIONER OF INDIAN AFFAIRS, Appellee	:	May 4, 1992

Appellant Metlakatla Indian Community of the Annette Islands Reserve seeks review of a September 5, 1991, decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (Deputy Commissioner; BIA), disapproving appellant's application for a FY 1991 Training and Technical Assistance grant in the amount of $134,225. The Board of Indian Appeals (Board) received appellant's notice of appeal on October 2, 1991, and received the administrative record on January 3, 1992. By letter dated February 9, 1992, appellant informed the Board that it would not file an opening brief.

The Deputy Commissioner's September 5, 1991, letter stated:

> [Appellant's] application did not rank sufficiently high among the tribal applications to receive a grant because of the weaknesses or deficiencies indicated below.
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> [Appellant] had requested a T/TA [Training and Technical Assistance] Grant of $134,225 whereas the range for such grants is $60,000 to $100,000; see T/TA Grant guidelines. The Bureau of Indian Affairs must hold all applicants to this level of funding.
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> While needs/problems statement satisfied the criteria and supportive documentation was provided, the work statement was not in enough detail to indicate grant goals/objectives would or could be accomplished. This also was reflected in the budget narrative or justification. Examples include three day training on Total Quality Management at $15,000 for 3 - 4 - 5 Council members appears excessive (see resolution passed by quorum of three). Also training, according to the budget narrative, would be in durations of two to five days. It is impossible to determine how such training would be effective considering the magnitude of [appellant's] needs/problems statement.

The Board's role in reviewing BIA decisions under the Training and Technical Assistance program is not to substitute its judgment for that of BIA, but rather to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. The Board has held that the appellant bears the burden of proving error in the decision not to fund its application. Cf., e.g., Sauk-Suiattle Indian Tribe v. Portland Area Director, 20 IBIA 238 (1991), and cases cited therein.

The administrative record supplied to the Board includes a revised application from appellant and a letter, dated September 18, 1991, in which appellant indicates that it had revised its application in accordance with the Deputy Commissioner's September 5, 1991, disapproval letter.

Appellant's revised application was not before the Deputy Commissioner when he issued his decision. In a competitive grant program, BIA can consider only the original grant application. If BIA were to consider a revised application, submitted after the time for filing applications, it would violate its duty to give fair and equitable consideration to all grant applications. Appellant's revised grant application cannot be considered. Cf., Nooksack Indian Tribe v. Deputy Commissioner of Indian Affairs, 21 IBIA 155 (1992); Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

With its February 9, 1992, statement that it would not file an opening brief, appellant submitted a statement of reasons dated November 1, 1991, from LeRoy Wilder, Esq., to the Deputy Commissioner. Apparently no copy of this statement was filed with the Board, even though the appeal was pending before it at the time, and there is no copy in the administrative record. Nevertheless, the Board will consider the statement.

Appellant first contends that the announcement did not require grant applications to be for less than $100,000, and provided that the amount of the grant was subject to negotiation. Appellant does not dispute, however, that the announcement stated that tribes could request grants ranging from $60,000 to $100,000.

Appellant's application clearly exceeded the limits of the grant program as announced. Although the announcement also provided that the ultimate amount of a grant was subject to negotiation, the Deputy Commissioner was entitled to conclude that an application seeking $34,225 in excess of the limitation could not be "negotiated" to meet the program limits. The Board affirms the Deputy Commissioner's determination that appellant's application substantially exceeded the grant announcement.

Appellant raises two arguments suggesting that the evaluation criteria are inherently inconsistent and illogical. Appellant contends that its application was disapproved because it proved its qualification for a grant by showing it was not capable of preparing an adequate grant proposal, and by showing how much it needed assistance.

The Deputy Commissioner has a responsibility to ensure that grant funds entrusted to the Department by Congress are used to the best advantage. He

determined that appellant's application did not show that appellant's proposed use of grant funds would effectively address the needs/problems it had identified. Appellant has not contested the factual statements made by the Deputy Commissioner, but instead has disputed only the conclusion reached. Appellant has not shown error in the Deputy Commissioner's decision.

Finally, appellant contends that its application was misread, and that it had requested $15,000 for total quality management training for 35, not "3 - 4 - 5," individuals.

Appellant's application indicates that the maximum number of people to be trained in total quality management is 35. Thus, it appears that the Deputy Commissioner's statement may be incorrect. The Deputy Commissioner references a tribal resolution, but does not indicate the number. Tribal resolution 91-17 is included in the administrative record, but does not appear to address the number of persons to be trained in total quality management. However, despite this possible problem, the Board finds that the Deputy Commissioner's decision to disapprove appellant's application is sufficiently supported for the other reasons already discussed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the September 5, 1991, decision of the Deputy Commissioner for Indian Affairs is affirmed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge